

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON - SEATTLE

RICHARD O. BUSE,

Plaintiff,

vs.

FIRST AMERICAN TITLE INSURANCE  
COMPANY; FORCLOSURELINK, INC.;  
GREENPOINT MORTGAGE FUNDING  
INC.; MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC.;  
RESCOMM HOLDINGS NO. 2, LLC; UM  
ACQUISITIONS, LLC; TOM BLOCK; and  
Doe Defendants 1 through 20,,

Defendants.

Case No. C-08-0510-MJP

ANSWER TO FIRST AMENDED  
COMPLAINT BY DEFENDANT  
FORECLOSURELINK, INC.

Defendant Foreclosurelink, Inc. ("Defendant" or "Foreclosurelink"), by and through its  
counsel of record, answers the Plaintiff's First Amended Complaint as follows:

**1 PARTIES**

1.1 Defendant lacks sufficient knowledge or information to form a belief as to the truth  
of the allegations in paragraph 1.1 of the Amended Complaint, and on that basis denies the  
allegations contained in paragraph 1.1.

1.2 Defendant admits that it serves as the agent for First American Title Insurance  
Company ("FATIC") purposes of certain nonjudicial foreclosures in the State of Washington.  
Defendant denies that it is an illegal and unlicensed agent of FATIC. Defendant lacks sufficient  
knowledge or information to form a belief as to the truth of the remaining allegations in paragraph

1 1.2 of the Amended Complaint, and on that basis denies the remaining allegations contained in  
2 paragraph 1.2.

3 1.3 Defendant admits that it is a California corporation, and that it acts as an agent for  
4 FATIC in connection with nonjudicial foreclosure activities within the State of Washington.  
5 Defendant denies the remaining allegations contained in paragraph 1.3.

6 1.4 Defendant lacks sufficient knowledge or information to form a belief as to the truth  
7 of the allegations in paragraph 1.4 of the Amended Complaint, and on that basis denies the  
8 allegations contained in paragraph 1.4.

9 1.5 Defendant admits that Mortgage Electronic Registration Systems, Inc. ("MERS") is  
10 a Delaware corporation, admits that MERS obtains security interests in real property located in the  
11 State of Washington, and was beneficiary under a deed of trust encumbering property owned by  
12 Plaintiff. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the  
13 remaining allegations in paragraph 1.5.

14 1.6 Defendant lacks sufficient knowledge or information to form a belief as to the truth  
15 of the allegations regarding Rescomm Holding No. 2's incorporation, registration, and licensing. The  
16 assignment of the Deed of Trust referenced in paragraph 1.6 speaks for itself, and therefore no  
17 response to the allegations regarding it is required.

18 1.7 Defendant lacks sufficient knowledge or information to form a belief as to the truth  
19 of the allegations regarding UM ACQUISITIONS, LLC's incorporation, registration, and licensing.  
20 The assignment of the Deed of Trust referenced in paragraph 1.7 speaks for itself, and therefore no  
21 response to the allegations regarding it is required.

22 1.8 Defendant lacks sufficient knowledge or information to form a belief as to the truth  
23 of the allegations regarding UM CAPITAL, LLC's incorporation, registration, and licensing. The  
24 assignment of the Deed of Trust referenced in paragraph 1.8 speaks for itself, and therefore no  
25 response to the allegations regarding it is required.

26 1.9 Defendant lacks sufficient knowledge or information to form a belief as to the truth  
27 of the allegations regarding United Mortgage & Loan Investment, LLC's incorporation, registration,  
28 and licensing. The assignment of the Deed of Trust referenced in paragraph 1.9 speaks for itself, and

1 therefore no response to the allegations regarding it is required.

2 1.10 Defendant admits that Mr. Block acquired the beneficial interest under a deed of trust  
3 encumbering the real property owned by Plaintiff. The document recorded in the official records of  
4 King County speaks for itself, and therefore no response to the allegations regarding it is required.

5 1.11 Defendant lacks sufficient knowledge or information to form a belief as to the truth  
6 of the allegations in paragraph 1.11 of the Amended Complaint, and on that basis denies the  
7 allegations contained in paragraph 1.11.

8 1.12 Defendant admits that Foreclosurelink acted as its agent for purposes of nonjudicial  
9 foreclosure notices. First American denies the remaining allegations contained in paragraph 1.12.

10 **2 FACTUAL ALLEGATIONS**

11 2.1 Defendant lacks sufficient knowledge or information to form a belief as to the truth  
12 of the allegations in paragraph 2.1 of the Amended Complaint, and on that basis denies the  
13 allegations contained in paragraph 2.1.

14 2.2 Defendant admits the first four sentences set forth in paragraph 2.2. The remaining  
15 allegations contained in paragraph 2.2 constitute legal conclusions and/or legal arguments and not  
16 allegations of ultimate facts, and no response is therefore required to those remaining allegations.

17 2.3 Defendant lacks sufficient knowledge or information to form a belief as to the truth  
18 of the allegations in the first sentence of paragraph 2.3 of the Amended Complaint, and on that basis  
19 denies those allegations. The document attached as Exhibit 2 to the Amended Complaint speaks for  
20 itself, and Defendant denies any allegations contained within the remainder of paragraph 2.3 which  
21 are inconsistent the actual Exhibit 2.

22 2.4 The documents attached as Exhibit 3 and Exhibit 4 to the Amended Complaint speak  
23 for themselves, and Defendant denies any allegations contained within paragraph 2.4 which are  
24 inconsistent the actual Exhibits 3 and 4.

25 2.5 The document attached as Exhibit 5 to the Amended Complaint speaks for itself, and  
26 Defendant denies any allegations contained within paragraph 2.5 which are inconsistent the actual  
27 Exhibits 5.

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1           2.6     Defendant lacks sufficient knowledge or information to form a belief as to the truth  
2 of the allegations in paragraph 2.6 of the Amended Complaint, and on that basis denies the  
3 allegations contained in paragraph 2.6.

4           2.7     Defendant lacks sufficient knowledge or information to form a belief as to the truth  
5 of the allegations in paragraph 2.7 of the Amended Complaint, and on that basis denies the  
6 allegations contained in paragraph 2.7.

7           2.8     Defendant admits the allegations set forth in the first two sentences of paragraph 2.8  
8 of the Amended Complaint. Defendant admits the Appointment of Successor Trustee was recorded  
9 on January, 9, 2007, and that as agent for FATIC, it issued a Notice of Default. Defendant denies  
10 the remaining allegations contained in paragraph 2.8 of the Amended Complaint.

11          2.9     The documents attached as Exhibits 9 and Exhibit 10 to the Amended Complaint  
12 speak for themselves, and Defendant denies any allegations contained within paragraph 2.9 which  
13 are inconsistent the actual Exhibits 9 and 10.

14          2.10    Defendant admits that a Notice of Default and a Notice of Trustee's Sale were  
15 delivered to Plaintiff. Defendant admits that Exhibit 11 is a true and correct copy of the Notice of  
16 Trustee's Sale issued to Plaintiff. Defendant lacks sufficient knowledge or information to form a  
17 belief as to the truth of the remaining allegations in paragraph 2.10 of the Amended Complaint, and  
18 on that basis denies the remaining allegations contained in paragraph 2.10.

19          2.11    Defendant admits that the documents comprising Exhibit 12 to the Amended  
20 Complaint appear to be printouts from a MERS web page. Defendant denies the remaining  
21 allegations contained in paragraph 2.11 of the Amended Complaint.

22          2.12    Defendant denies that it is the "actual foreclosing trustee" as alleged in paragraph 2.12  
23 of the Amended Complaint. Defendant denies that either FATIC or it violated Washington law in  
24 issuing nonjudicial foreclosure notices at issue, and denies all allegations contained within paragraph  
25 2.12 which can be construed to allege such a violation. The remaining allegations in paragraph 2.12  
26 contain quotes from statutes or legal arguments that do not constitute allegations of ultimate facts,  
27 and therefore no responsive pleading is necessary.

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3 **INFLICTION OF EMOTIONAL DISTRESS**

3.1 Defendant realleges each and every response contained within this Answer as through fully set forth herein.

3.2 Defendant denies the allegations in paragraph 3.2 of the Amended Complaint.

3.3 Defendant denies the allegations in paragraph 3.3 of the Amended Complaint.

4 **SLANDER OF TITLE**

4.1 Defendant realleges each and every response contained within this Answer as through fully set forth herein.

4.2 Defendant denies the allegations in paragraph 4.2 of the Amended Complaint.

4.3 Defendant denies the allegations in paragraph 4.3 of the Amended Complaint.

5 **BREACH OF FIDUCIARY DUTY OR QUASI-FIDUCIARY DUTY**

5.1 Defendant realleges each and every response contained within this Answer as through fully set forth herein.

5.2 Defendant admits that a nonjudicial foreclosure trustee has been deemed to owe a type of fiduciary duty to a trustor under Washington law, but denies the nature or scope of the relationship as alleged in paragraph 5.2 of the Amended Complaint. Defendant lacks knowledge or information sufficient to form a belief as the nature of any alleged fiduciary relationship between Plaintiff and any other party, and on that basis denies the remaining allegations contained in paragraph 5.2 of the Amended Complaint.

5.3 Defendant admits that a nonjudicial foreclosure trustee has been deemed to owe a type of fiduciary duty to a trustor under Washington law. Defendant denies the remaining allegations contained in paragraph 5.3 of the Amended Complaint.

5.4 Defendant denies the allegations in paragraph 5.4 of the Amended Complaint.

6 **VIOLATION OF THE CONSUMER PROTECTION ACT**

6.1 Defendant realleges each and every response contained within this Answer as through fully set forth herein.

6.2 Defendant denies the allegations in paragraph 6.2 of the Amended Complaint.

6.3 Defendant denies the allegations in paragraph 6.3 of the Amended Complaint.

**COMPLAINT FOR TEMPORARY RESTRAINING ORDER AND ISSUANCE OF  
A PRELIMINARY INJUNCTION**

7.1 Defendant admits that Plaintiff moved for a temporary restraining order before this action was removed to Federal Court. Defendant lacks knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 7.1 of the Amended Complaint, and on that basis denies the remaining allegations contained in paragraph 7.1.

7.2 Paragraph 7.2 of the Amended Complaint sets forth legal argument rather than allegations of ultimate facts, and therefore no responsive pleading is necessary.

7.3 Paragraph 7.3 of the Amended Complaint sets forth legal argument rather than allegations of ultimate facts, and therefore no responsive pleading is necessary.

**8 VIOLATIONS OF THE REAL ESTATE SETTLEMENT PROCEDURES ACT**

8.1 Defendant realleges each and every response contained within this Answer as through fully set forth herein.

8.2 Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 8.2 of the Amended Complaint, and on that basis denies the allegations contained in paragraph 8.2.

8.3 Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 8.3 of the Amended Complaint, and on that basis denies the allegations contained in paragraph 8.3.

8.4 Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 8.4 of the Amended Complaint, and on that basis denies the allegations contained in paragraph 8.4.

**AFFIRMATIVE DEFENSES**

As separate and affirmative defenses to Plaintiff's Amended Complaint, Defendant alleges the following:

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**FIRST AFFIRMATIVE DEFENSE**

**(Failure to Mitigate)**

Plaintiff has failed to mitigate his damages, if any, as required by law, and is barred, in whole or in part, from recovery by reason thereof against Defendant.

**SECOND AFFIRMATIVE DEFENSE**

**(Apportionment)**

The matters complained of in the Complaint were proximately caused, in whole or in part, by the acts or omissions of a third party or parties or by Plaintiff. Accordingly, the liability of Defendant and responsible parties, named or unnamed, should be apportioned and the liability, if any, of Defendant should be reduced accordingly.

**THIRD AFFIRMATIVE DEFENSE**

**(Unclean Hands)**

Plaintiff's inequitable conduct constitutes unclean hands and therefore bars the granting of equitable relief requested by Plaintiff herein.

**FOURTH AFFIRMATIVE DEFENSE**

**(No Proximate Cause)**

None of the injuries allegedly suffered by Plaintiff were proximately caused by Defendant's conduct.

**FIFTH AFFIRMATIVE DEFENSE**

**(Privilege)**

As the authorized agent of a nonjudicial foreclosure trustee, Defendant's conduct was proper and subject to privilege pursuant to the terms and conditions of the subject Note, Deed of Trust, and Washington statute.

**SIXTH AFFIRMATIVE DEFENSE**

**(Lawful Action)**

Any injuries allegedly suffered by Plaintiff as a results of Defendant's alleged conduct were the result of a lawful effort of Defendant to perform its duties as the authorized agent of a nonjudicial foreclosure trustee under Washington law.



**SEVENTH AFFIRMATIVE DEFENSE**

**(Justification)**

The acts or omissions complained of by Plaintiff were justified.

**EIGHTH AFFIRMATIVE DEFENSE**

**(No Punitive Damages)**

Defendant has not acted with oppression, fraud or malice toward Plaintiff, and therefore, Plaintiff is not entitled to exemplary or punitive damages.

**NINTH AFFIRMATIVE DEFENSE**

**(Compliance with Statutes)**

Defendant has complied with all relevant Washington and federal statutes governing the relationship, if any, between Plaintiff and Defendant regarding the alleged conduct of Defendant in the Complaint.

**TENTH AFFIRMATIVE DEFENSE**

**(Unstated Affirmative Defenses)**

Defendant alleges that at this time it has insufficient knowledge or information on which to form a belief as to whether it may have additional, as yet unstated, affirmative defenses available. Defendant therefore reserves herein the right to assert additional affirmative defenses in the event that discovery indicates that they would be appropriate.

Based upon the foregoing, Defendants respectfully requests that:

1. The Plaintiff take nothings by way of his Amended Complaint;
2. For costs of suit; and,
3. For such other and further relief as the Court deems proper.

Dated: May 2, 2008 PITE DUNCAN, LLP

 /s/ Peter J. Salmon

By: Peter J. Salmon

Attorneys for Defendants FIRST  
AMERICAN TITLE INSURANCE  
COMPANY; FORCLOSURELINK, INC.

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